Office-Supreme Court, U.S.
FILED
MAY 23 1981
ALEXANDER L. STEVAS,
CLERK

80-1977
No. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1980

LINDA F. MASON,

Appellant,

—v.—

ROBERT B. ABRAMS, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Appellee.

ON APPEAL FROM THE
NEW YORK COURT OF APPEALS

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

I

IS SECTION 114 OF THE NEW YORK DOMESTIC RELATIONS LAW, WHICH DENIES AN ADULT ADOPTEE ACCESS TO HER ADOPTION RECORDS EXCEPT UPON A SHOWING OF GOOD CAUSE, AN UNCONSTITUTIONAL INFRINGEMENT OF AN ADOPTEE'S RIGHT TO DUE PROCESS PROTECTION FROM INVASION OF HER RIGHTS OF PRIVACY AND PERSONAL AUTONOMY?

II

DOES SECTION 114 OF THE NEW YORK DOMESTIC RELATIONS LAW IMPINGE UPON AN ADOPTEE'S RIGHT OF FREE SPEECH PROTECTED BY THE FIRST AMENDMENT A NECESSARY PART OF WHICH IS FREEDOM OF INQUIRY AND THE RIGHT TO RECEIVE INFORMATION?

III

DOES THE GOOD CAUSE REQUIREMENT OF SECTION 114 OF THE NEW YORK DOMESTIC RELATIONS LAW, AS APPLIED IN APPELLANT'S CASE, RESULTING IN DENIAL OF ACCESS TO HER ADOPTION RECORDS, MAKE THE NEW YORK STATUTE AN UNCONSTITUTIONAL INFRINGEMENT OF THE PROTECTED RIGHT OF PRIVACY, PERSONAL AUTONOMY AND FREE SPEECH?

PARTIES TO THE PROCEEDING

The parties to this proceeding are Linda F. Mason, appellant and Robert B. Abrams, Attorney General of the State of New York, appellee.

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v.

ROBERT B. ABRAMS, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellee.

On Appeal From The
New York Court of Appeals

JURISDICTIONAL STATEMENT

Appellant Linda F. Mason appeals from the order of the New York Court of Appeals entered February 24, 1981 affirming the denial of access to her of her own adoption records.

OPINIONS BELOW

The opinion of the Court of Appeals of New York, dated February 24, 1981, is attached to this jurisdictional statement as Appendix A. Prior opinions in the same proceeding include the written opinion and order of the Appellate Division, First Department, dated November 27, 1979, attached as Appendix B, a written opinion and final decree of the Surrogate's Court, Bronx County, entered on March 23, 1979, reported at 95 Misc.2d 581, 409 N.Y.S.2d 638 (1978), attached as Appendix C and a written opinion of the Surrogate's Court, reported at 92 Misc.2d 828, 401 N.Y.S.2d 960 (1978), attached as Appendix D.

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

The proceedings below were commenced in the New York Surrogate's Court by appellant, Linda F. Mason, in order to gain access to her adoption records. Section 114 of the

New York Domestic Relations Law (McKinney's) states that no person shall be allowed access to those records except upon court order after a showing of "good cause." The final order of the New York Court of Appeals, which upheld the constitutionality of section 114 and affirmed the lower court's denial of access was entered on February 24, 1981 and is attached as Appendix E. A Notice of Appeal was filed in the Court of Appeals and the Surrogate's Court, Bronx County on May 4, 1981 and is attached as Appendix F. Jurisdiction is conferred on this Court by 28 U.S.C. §1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The relevant constitutional provisions involved are the First and the Fourteenth Amendments to the United States Constitution. Section 114 of the New York Domestic Relations Law provides, in relevant part:

> ...No person shall be allowed access to...sealed [adoption]

> records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. No order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct...

STATEMENT OF FACTS

Appellant Linda F. Mason was born on July 19, 1940 to parents unknown to her and was adopted by Dr. Irwin Mason and his wife, Anne Mason on March 4, 1941. [T.17]* Appellant first learned that she was adopted in July of 1971 when she was thirty-one years old. [T.16, 19] Her search for the identity of her natural parents began two years later and continues to the present.

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* [T.] refers to the page number of the transcript of the hearing held in the Surrogate's Court, Bronx County on March 16, 1978.

In 1977, having exhausted other means of locating her natural parents, appellant commenced this proceeding by petition in the Surrogate's Court, Bronx County to obtain access to her adoption records and her original birth certificate. From the outset of this proceeding, appellant has contended that section 114 of the New York Domestic Relations Law is unconstitutional both on its fact and as applied to her. The Attorney General of New York appeared pro se in the Surrogate's Court, and at every level of this litigation, in support of the constitutionality of the statute.

On March 16, 1978 a hearing to determine whether appellant possessed the statutory requisite's "good cause" was held in the Surrogate's Court. At that hearing, testimony was presented to show appellant's psychological reaction to the news of her adoption, and to her consequent state of ignorance about her true identity.

Linda Mason testified she had long suspected that she was adopted. However, her adoptive father had discouraged inquiry. [T.23] Then, at age thirty-one she was told for the first time that she was, in fact, adopted. [T.26]

After hearing that she was adopted, her life changed dramatically. Although she married in 1972, the year after she learned of her adoptive status, appellant refused to have children of that marriage because she had began to fear genetic diseases, not knowing her heredity.* [T.20, 21] The marriage itself broke up in 1974, eventually ending in an anullment because she did not want children for fear of incest, and because she had become increasingly preoccupied with discovering her identity. [T.28]

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* She had one child by a marriage that ended in divorce before she learned that she was adopted. [T.20]

Around the time that her second marriage broke up, appellant began a thorough search for the identity of her parents which ultimately resulted in the filing of the petition in the Surrogate's Court. [T.25-26, 31-32] Appellant testified that she wants access to her records because she feels "cut off from the rest of humanity" [T.36] and wants "to know who I am." [T.28]

Appellant sought treatment from Dr. William Reynolds, a psychologist who has studied adoptees and specialized in their treatment,* because she was very distressed about the conditions of her life after learning of her adopted status. [T.127] He

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* Dr. Reynolds was, at the time of the hearing, an associate professor at Queens College, the City of New York, with a Ph.D in psychology from the University of Iowa. He is a member of the American Psychological Association, the American Psychology and Law Society, the Society for Adolescent Medicine, the Eastern Psychological Association, and the Western Psychological Association. Dr. Reynolds is a specialist in the psychology of adoptees. [T.103-110]

testified at the hearing that she was in a "fairly large life crisis" and was extremely disturbed by the knowledge that she was adopted. [T.127] He had seen appellant five times for one hour each session; [T.125] he diagnosed her as having, at that time, an "inadequate personality" [T.130] and felt that disclosure of her records would be very beneficial to her. [T.131] He concluded that she was engaged in obsessional thinking about the adoption, [T.130-132] that the late discovery of her status was the predominant factor in her negative psychological state [T.133] and that psychotherapy for appellant would be much more successful after she learned the identity of her natural parents. [T.143]

Dr. Edward Gendel, a psychiatrist and geneticist testified that there are about 2,300 different genetic diseases, and that in the U.S. population as a whole, about 15,000,000 people have a genetic disease.

[T.64] Approximately 25 percent of all hospital admissions of children are for illness having genetic origins. [T.64] He testified that knowing a family's medical history can be extremely important for the prediction of certain hereditary diseases. [T.62] In addition, he indicated that people with a high likelihood of giving birth to children with genetic defects can be monitored with extra care. [T.66-67] He also testified that there is an increased risk of genetic problems if one marries someone in a close family relationship. [T.78]

After the hearing and submission by appellant and the appellee of memoranda of law, the Surrogate's Court denied appellant's request for access to her records. Matter of Linda F. M., 95 Misc.2d 581 (1978); pp. 1d-32d. The court held that appellant had failed to show good cause, stating that an adoptee "must show a present need to view the sealed records...[and that] [t]his need must rise

above mere desire or curosity" (citations omitted), p. 10d. Furthermore, the court flatly rejected appellant's constitutional challenge, holding that "[n]o right to privacy of [appellant] is conceivably at issue. If any person's privacy is involved, it is the possible right to privacy of the natural parents." p. 21d The court concluded that no fundamental right is affected by the statute, reasoning, in part, that "(c)ountless citizens drink the cup of liberty to the fullest extent without any information as to their forebears." p. 26d Having found that because there was neither a fundamental right nor a suspect class affected by the statute, the strict scrutiny test was not applicable. Further, using the rational basis test, the court found section 114 to be a rational scheme promoting infants' welfare by facilitating adoption. p. 31d

The Appellate Division, First Department affirmed, adopting the reasons of the Sur-

rogate's Court. pp. 1b-2b The Court of Appeals upheld the decisions of the courts below, accepting their finding that appellant's desire to see her records was based on mere curiosity. p. 6a That court ruled that section 114

> shields the adopted child from possibly disturbing facts surrounding his or her birth and parentage, it permits the adoptive parents to develop a close relationship with the child free from interference or distraction, and it provides the natural parents with an anonymity that they may consider vital (citation omitted). p. 4a

Finally, the Court of Appeals rejected appellant's claim that Section 114 is unconstitutional, relying upon Alma Soc. v. Mellon, 601 F.2d 1225, cert. den. 444 U.S. 995 (1979). p. 10a

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

The result reached in this case is at odds with an unbroken line of decisions in this Court. Appellant knows of no case in

which this Court upheld a statutory scheme which restricted critical information about an individual based upon a justification merely of a rational basis for the restriction. Appellant contends that the New York statute interferes with her constitutional right of privacy and her First Amendment rights of inquirying and access to information.

Although this case is not in substantial conflict with decisions of the courts in other states, a number of states have statutes which would have allowed appellant access to her birth records if she was born there. Several states allow the adoptee access to the original birth certificate automatically or upon demand. See, e.g. Ala. Code Tit. 26-10-4 (Cum. Supp. 1971); Conn. Gen. Stat. Ann. §7-53 (1973); Fla. Stat. Ann. §382.22 (1973); Kan. Stat. Ann. §65-2423 (1972); La. Rev. Stat. Ann. §40-73 (1965). In Minnesota, the court is required to grant a request for

disclosure of an adoptee's original birth certificate "if, after consideration of the interests of all persons involved, the Court determines that disclosure of the information would be of greater benefit than nondisclosure" provided that the natural parents have not filed an affidavit that the information on the birth certificate should not be revoked. Minn. Stat. Ann. §144.1761 subd. 3(a) (West Supp. 1981). The interests involved in this case affect citizens throughout the United States and are worthy of plenary review by this Court.

I
SECTION 114 IS UNCONSTITUTIONAL ON ITS FACE BECAUSE IT INTERFERES WITH CONSTITUTIONALLY PROTECTED FUNDAMENTAL RIGHTS

Appellant challenges section 114 of the New York Domestic Relations Law as an unconstitutional intrusion into perhaps the most basic and personal aspect of an individual's existence: her origin, ancestry and genetic heritage. The statutory scheme involved in

this case deprives appellant of the information most basic to her ability to lead a full and productive life including information concerning who she is, who her forebearers are and what her genetic heritage is. Without this information, the adult adoptee cannot intelligently exercise the rights to "conceive and raise his or her children, rights this court has labeled 'essential' (Meyer v. Nebraska, 262 U.S. 390, 399 (1923)), 'basic civil rights of man' (Skinner v. Oklahoma, 316 U.S. 535, 541 (1943), and '[r]ights more precious...than property rights'." May v. Anderson, 345 U.S. 528, 533 (1953).

The courts below erroneously applied the rational basis test in determining the constitutionality of section 114. This error was committed because of a failure to recognize the fundamental rights intruded upon by the statute.

A. Privacy

Among the fundamental constitutional rights affected by the New York statute is the right of privacy. This Court has consistently recognized a fundamental constitutional "right of privacy" which neither the Federal Government nor the states may invade. Griswold v. Connecticut, 381 U.S. 479 (1965); Roe v. Wade, 410 U.S. 113 (1973). Encompassed within the right of privacy is the family constellation. "If the right of privacy means anything, it is the right . . . to be free from unwarranted government intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." Eisenstadt v. Baird, 405 U.S. 438, 453 (1972).*

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* Congress has recognized that the right of privacy and the right to receive information are both implicated by the withholding of information contained in federal agency record systems. In response, it enacted the Freedom of Information Act, 5 U.S.C. §552 and the Privacy Act, 5 U.S.C. §552a. Both contain provisions for individual access to federal records.

There exists no clear consensus by commentators on the definition of privacy nor on the nature of the interest the privacy right is designed to protect. Professor Fried has stated that privacy "is control over knowledge about oneself" and in this context is "an aspect of personal liberty." Fried, Privacy, 77 Yale L.J. 475, 483 (1968). Another commentator has stated that the "essence of privacy is the notion that certain basic decisions about how one will conduct his or her life--whether on a day-to-day basis for in a long-term sense--are reserved to the individual." Note, On Privacy: Constitutional Protection for Personal Liberty, 48 N.Y.U.L. Rev. 670, 705 (1973). Along the same lines, in his landmark book, Professor Westin stated that "the autonomy that privacy protects is also vital to the development of individuality and consciousness of individual choice of life." A.

Westin, Privacy and Freedom, 34 (1967). Former Judge Shirley Hufstedler eloquently expanded upon this concept:

> The personal interest to be protected by a right or privacy is the individual's interest in preserving his essential dignity as a human being. It is his interest in securing the autonomy of his personality. It is an interest that society shares, because a society cannot long endure that is unable to preserve to its members the autonomy of their personalities. If the right is broad enough to encompass that interest, it is grand enough to deserve the tribute that it is the most comprehensive of rights and the most valued.

S. Hufstedler, The Directions and Misdirections of a Constitutional Right of Privacy 15-16 (1971)(emphasis added).

Under the above definitions, appellant has a privacy right to her adoption records since they peculiarly affect her and her search for personhood. Her right to know the identity of her natural parents is a right basic to her inherent human dignity. This is particularly true in light of psy-

chological evidence proving that such knowledge is crucial to identity development. See Hanley, A Reasonable Approach to the Adoptee's Sealed Records Dilemma, 2 Ohio N.L. Rev. 542, 552 (1975).

1. Identity Crisis

Experts who have studied adoptees have established that identity formulation is impaired in adoptees by their lack of knowledge about their past. An adoptee suffers from a "geniological bewilderment" when deprived of knowledge of the identity of his natural parents. Sorosky, Baron, Pannor, Identity Conflict in Adoptees, 45 Am. L. of Orthopsychiatry 18, 20-21 (1975). This lack of knowledge produces a gap in the adoptee's sense of identity -- a gap that "contributes to a sense of distance from people, a sense of unicality, that adopted people rather consistently feel." Sorosky, Baron, Pannor, The Adoption Triangle 138 (1978). The adoptee is left with the knowledge that "an

essential part of himself...has been cut off and remains on the other side of the adoption barrier." Identity Conflict in Adoptees, supra at 20-21. Furthermore, identity formulation is a life-long process and the adoptee's psychological need to understand his origins continues into adulthood. Note, The Adult Adoptee's Constitutional Right to Know His Origins, 48 S. Cal. L. Rev. 1196, 1202 (1975).

2. Genetic Background

Inherent within the right to the "control of one's body," Roe v. Wade, supra, is the right to knowledge about one's medical history. Knowledge is essential to meaningful control. Recent advancement in medical science requires the conclusion that continued withholding from adoptees of birth records violates the adoptees' right of personal autonomy and privacy. Lack of the most fundamental knowledge of family medical history may inflict the gravest damage on adop-

tees and their families. Since some genetic diseases manifest themselves only in adult life [T.76], knowledge of one's origin and family background is important in the prevention or treatment of diseases which are genetically determined.

B. First Amendment

Section 114 also impinges upon appellant's fundamental First Amendment right of free speech, a necessary part of which is freedom of inquiry and the right to receive information. Stanley v. Georgia, 394 U.S. 557 (1969); Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367 (1969); Martin v. Struthers, 319 U.S. 141 (1943).

As this Court has indicated,

> "[T]he State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read...and freedom of inquiry, freedom of thought and freedom to teach...."

Griswold v. Connecticut, 381 U.S. at 482.

The documents involved here are public (the birth certificate) or judicial records (the adoption proceeding). That appellant needs access to them for her individual development does not take her outside the First Amendment. It has been suggested by some commentators that the facilitation of individual development is an independent purpose of the First Amendment. Emerson, Toward a General Theory of the First Amendment, 72 Yale L. J. 887, 879-81 (1963). The right to receive information recognized in Stanley v. Georgia, supra, embraces matters that contributes only to individual development in a private setting and is not limited to factual materials of a clear public interest important for democratic decision making. Concurring with the Court's decision in United States v. Reidel, 402 U.S. 351 (1971), Justice Harlan observed: "[T]he 'right to receive' recognized in Stanley...is a right

to protective zone ensuring the freedom of a man's inner life, be it rich or sordid." United States v. Reidel, 402 U.S. at 359-60 (emphasis supplied).

The "right to receive information and ideas, regardless of their social worth...is fundamental to our free society." Stanley v. Georgia, 394 U.S. at 564. An adult adoptee's right to receive information concerning something as central to his identity as his natural origins can hardly be less fundamental than the right to receive the information contained in sexually explicit materials.

An obvious distinction between ordinary reading materials and adoption records is that the latter arguably affect the interests of others, specifically the natural parents. This distinction is useful analytically only when determining whether section 114 serves the necessary compelling state interest. The fact that a particular right of an in-

dividual may infringe upon another's rights, does not affect the character of the right itself. The New York courts erroneously failed to recognize the fundamental character of appellant's rights. Section 114 was upheld only by finding a rational basis for its existence. Appellant submits that she has a fundamental First Amendment right of access to her birth records. Accordingly, the Court of Appeals should have applied a strict scrutiny test, demanding that New York present a compelling reason for its denial of access to the vital information contained in appellant's adoption records. See Shapiro v. Thompson, 394 U.S. 618 (1969).

II
SECTION 114 IS UNCONSTITUTIONAL AS APPLIED TO APPELLANT IN THIS CASE

Appellant's inability to satisfy the "good cause" requirement of section 114 renders the statute unconstitutional as applied to her. Appellant has demonstrated a strong desire to see her records. She has also

established that her only living adoptive parent approves of disclosure of those records. pp. 3a; 1c; [T.12-14] New York has not justified its decision to frustrate the legitimate wishes and needs of appellant.

Uncontradicted evidence was present at the hearing to show that appellant was formally told that she was adopted at the late age of thirty-one years and that this information has profoundly, and adversely, affected her life. She is in a "fairly large life crisis." [T.127] She has become obsessed with learning as much information as possible about her roots. She is in constant fear of committing incest and may never again marry and bear children because of this. Her own psychologist recommended as the first phase of her treatment that she obtain her birth records. She wants and needs to do that.

It is true that the Court of Appeals characterized appellant's desire to have

access to her birth records as springing "from mere general curiosity about her parentage, rather than from a concrete and compelling need." p. 6a Although ordinarily this finding of "fact" precludes review by this Court, it has been recognized that the conclusion that may appropriately be drawn from the whole mass of evidence is not always the ascertainment of the kind of "fact" that precludes consideration by this Court. See e.g. Beyer v. LeFeore, 186 U.S. 114 (1902); Baumgartner v. United States, 322 U.S. 665, 671 (1944).

Regardless of the characterization of appellant's need for access, appellant has submitted to the courts below legitimate reasons for granting her access to her birth records. The record is wholly devoid of reasons for not granting appellant access. The only reasons identified by the Court of Appeals in support of section 114 and its confidentiality provisions support, if any-

thing, the facial legitimacy of the statute. The reasons are immaterial to this case.

The Court of Appeals stated that confidentiality serves several purposes:

> It shields the adoptive child from possibly disturbing facts surrounding his or her birth and parentage, it permits the adoptive parents to develop a close relationship with the child free from interference or distraction, and it provides the natural parents with an anonymity* that they may consider vital. p. 4a

Thus, the Court of Appeals found as justification for the statute, a) protection of the adoptee, b) maintenance of close relationship between adoptee and adoptive mother and c) privacy of natural parents.

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* The Court of Appeals relied on the case of People ex rel Scarpetta v. Spence-Chapin Adoption Serv., 28 N.Y.2d 185, 195, cert. den., 404 U.S. 805 (1971), as authority for the notion that the natural parents should have their anonymith preserved. That case, however, relates only to withholding information from the adopting parents, not from the child.

Even if these interests are legitimate, and may properly serve to frustrate the wishes of an adoptee in some cases, they hardly satisfy the burden necessary to outweigh appellant's right of access.

A. Protection of the Adoptee

The paternalistic desire to shield the adoptee from possibly disturbing facts about his or her birth is inappropriately applied to appellant. Ironically, it is the ban on information, rather than access to any information, which is adversely affecting appellant. Moreover, because appellant is an adult, the State has no legitimate interest in protecting her in circumstances in which she does not want protection. cf. O'Conner v. Donaldson, 422 U.S. 563 (1975). Finally, no evidence was presented to indicate that the information contained in appellant's birth records does include disturbing facts. Indeed, there is no suggestion that the courts below relied on this ground in deny-

ing access.

B. Maintenance of Close Relation Between Adoptee and Adoptive Parent

This justification is similarly inapplicable to appellant's case. Both appellant and her only living adoptive parent want the information contained in the birth records to be revealed. The theoretical justification for restricting access in a situation in which the adoptive parents are vigorously opposed to opening the records is immaterial to the facts presented in this case. At the hearing, appellant's mother testified that she wanted appellant to have access to all information concerning her birth. Thus, if section 114 was enacted to protect the adoptive parents, appellant's mother has waived any protection which the statute was designed to afford her. The state has no legitimate interest imposing upon appellant and her mother a "protection" which neither wants and both expressly rejected.

C. Privacy of Natural Parents

The only interest identified by the Court of Appeals which conceivably could justify barring appellant's access to her records is the privacy interests of the birth parents.

Assuming, arguendo, that the privacy rights of natural parents are sufficient to sustain section 114 against a facial attack, in this case, the wishes of the natural parents are unknown. Appellant's right of access was infringed because of a mere possibility that the birth parents, if asked, would not want appellant to know who they are. The state has failed completely to show a basis for depriving appellant of information which she so strongly wants or

needs.* Whatever theoretical interests the state may have in keeping records secret, the record is wholly devoid of any proof that they justify restriction of information to appellant. cf. Mills v. Atlantic City Dept. of Vital Statistics, 148 N.J. Super. 302, 372 A.2d 646 (Ch. Div. 1977).

At the very least, appellant has put into issue the justification for keeping the records secret to a sufficient degree that the burden should have been shifted to the State to indicate concretized, actual reasons for

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* Under the Freedom of Information Act, 5 U.S.C. §552(b)(6), for example, records could be withheld when disclosure "would constitute a clearly unwarranted invasion of personal privacy" (emphasis supplied). Under the FOIA, the agency withholding access has the burden of sustaining its action. Chamberlain v. Alexander, 419 F. Supp. 235 (S.D. Ala. 1976). As a result, access to adoption records could be denied only if the state were able to establish, in each specific case, that disclosure was clearly unwarranted because of the natural parents' adamant resistance to disclosure, combined with their legitimate claim of a right to privacy and anonymity.

depriving appellant access to her records. In the absence of such reasons, the operation of section 114 to deprive appellant of access renders the statute unconstitutional as applied to the facts in this case.

CONCLUSION

For the reasons stated above, the Court should note probable jurisdiction and set this case for plenary briefing and argument.

Respectfully submitted,

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May, 1981

APPENDIX A

STATE OF NEW YORK
COURT OF APPEALS

In the Matter of Linda F. M.,
Adopted as a Minor Under the Age
of 14 Years by Dr. Irwin M. and
Anne M. for leave to Gain Access
to the Sealed Adoption Records,

Appellant.

OPINION

COOKE, Ch. J.:

This appeal focuses on the circumstances under which adopted persons can later discover the identity of their natural parents by obtaining access to the sealed adoption records. Section 114 of the Domestic Relations Law provides that such disclosure shall be granted only for "good cause." For the reasons that follow, the courts below were correct in concluding that petitioner here failed to meet this standard.

Petitioner was born on July 19, 1940, and was adopted on March 4, 1941 pursuant to an order of the Surrogate's Court of Bronx County. She did not learn of her adoption until 1971. In 1977, after attempting without success to locate her natural parents by other means, petitioner began this proceeding to obtain access to her sealed adoption records. She alleged various psychological problems stemming from her ignorance of her background. After a hearing, the Surrogate found that petitioner had failed to establish good cause for unsealing the records. The Appellate Division affirmed for the reasons stated by the Surrogate.

Section 114 of the Domestic Relations Law places great emphasis on the confidential

nature of adoption records.[1] The section provides that they "shall be sealed and secret." It prohibits anyone, including the adoptive parents' attorney, from disclosing the child's original surname to the adoptive parents. It authorizes punishment for contempt of court for certain breaches of confidentiality occurring in the handling of the records. The section permits access to the records only by court order "on good cause shown and on due notice to the adop-

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1. Although the state's first statute authorizing adoptions contained no provision for the sealing of adoption records (L 1873, ch 830), the Legislature in 1924 authorized courts to seal such records in their discretion. Once sealed, a showing of good cause was required for access (L 1924, ch 323). Since 1938, the sealing of such records has been mandatory, with access available only after a court determination of good cause (L 1938, ch 606).

Today, only a relative handful of states permit access by adopted children to adoption records without some type of demonstration on need (see Note, the Adult Adoptee's Constitutional Right to Know His Origins, 48 So Cal L Rev 1195, 1199). The Uniform Adoption Act contains a good cause requirement similar to New York State's statute (Uniform Adoption Act § 16, subd 2).

tive parents and to such additional persons as the court may direct."

This confidentiality serves several purposes. It shields the adopted child from possibly disturbing facts surrounding his or her birth and parentage, it permits the adoptive parents to develop a close relationship with the child free from interference or distraction, and it provides the natural parents with an anonymity that they may consider vital (People ex rel. Scarpetta v. Spence-Chapin Adoption Serv., 28 NY2d 185, 195, cert den, 404 US 805). The state's interest in fostering an orderly and supervised system of adoptions is closely tied to these interests of the parties involved (Matter of Anonymous, 89 Misc 2d 132; 92 Misc 2d 224).

Although petitioner, now an adult, has obtained the approval of her adoptive mother for her attempt to gain access to the adoption records and her adoptive father is de-

ceased, the natural parents retain a potentially strong interest in maintaining their anonymity. It thus is essential that petitioner make a showing of good cause. A natural parent understandably can feel deep effects when the records of an adoption are opened years after the child was surrendered for adoption. Although the sudden reappearance of the child may often be a source of great pleasure to the natural parent, in other cases it may be a destructive intrusion into the life that the parent has built in the years since the adoption. It may be the source of much discomfort. In some cases, it may even open the way for the child or others to blackmail the natural parent by threatening to disclose embarrassing circumstances surrounding the birth.

Petitioner alleges that her inability to discover the identity of her natural parents has caused psychological problems that have broken up a marriage and hampered develop-

ment of her artistic and musical creativity. The courts below, however, found that any problems she had encountered in these areas were not credibly connected to her lack of knowledge of her natural parents' identities. To the extent that she was troubled by her lack of knowledge, the courts found that this sprang from mere general curiosity about her parentage, rather than from a concrete and compelling need. The record amply supports these findings.

Petitioner herself summarized her reasons for wanting access to her records as a desire "[t]o know who I am. I feel cut off from the rest of humanity. I was given birth to the same way as everyone else, but everyone else can send away $3 and get a copy of their birth certificate. I want to know who I am. The only person in the world who looks like me is my son. I have no ancestry. Nothing." A desire to learn about one's ancestry should not be belittled. When

balanced against the interests of other parties to the adoption process, however, it cannot alone constitute good cause under section 114. This is not to say that concrete psychological problems, if found by the court to be specifically connected to the lack of knowledge about ancestry, would never constitute good cause (see Matter of Anonymous, 92 Misc 2d 224). By its very nature, good cause admits of no universal, black-letter definition. Whether it exists, and the extent of disclosure that is appropriate,[2] must remain for the courts to decide on the facts of each case. Nevertheless, mere desire to learn the identity of one's natural parents cannot alone constitute good cause, or the requirement of section 114

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2. Where records are needed for a specific health-related purpose, a court may wish to consider permitting disclosure of relevant medical data in the records without revealing other material such as the identities of the natural parents (see, e.g., Matter of Chattman [Bennett], 57 AD2d 618).

would become a nullity. Petitioner, therefore, has failed to meet the statutory prerequisite to gaining access to her records.

This appeal also raises the issue of whether notice of such a proceeding should also be given to the natural parents. Although the notice provision of section 114 specifically mentions only the adoptive parents,[3] the interests of the natural parents dictate that notification be given if the court finds that the petitioner has made a showing of entitlement and provided that the natural parents can be located with reasonable effort and in a manner that will not be likely to be self-defeating by revealing their identities to the adoptive parents or others. Such notice provides the natural

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3. Section 114 of the Domestic Relations Law provides in pertinent part: "No order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct."

parents with an opportunity to intervene through a representative in the proceeding and defend their interests in retaining anonymity (cf Matter of Anonymous, 89 Misc 2d 132; 92 Misc 2d 224, supra). Because this interest may not receive full articulation in their absence, it is important that those who may be vitally affected by disclosure be given a chance, if practical, to intervene. It is possible, of course, that such notice to the natural parents would not be practical. Such was the case in this proceeding, in which the Surrogate found on the record that it would be all but impossible to locate the natural parents by reasonable efforts and that other means of protecting their interests would suffice. The Surrogate's decision to forego notice in this case was therefore proper. Corresponding care must also be taken to protect the privacy interests of the adoptive parents.

Finally, petitioner's claim that section 114 is unconstitutional is rejected (see Alma Soc. v Mellon, 601 F2d 1225, cert den, 444 US 995).

Accordingly, the order of the Appellate Division should be affirmed, with costs.

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Order affirmed, with costs. Opinion by Cooke, Ch. J. All concur.

Decided February 24, 1981

APPENDIX B

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on November 29, 1979

Present-Hon. Harold Birns, Justice Presiding
Arnold L. Fein
Joseph P. Sullivan
Arthur Markewich
J. Robert Lynch Justices

In the Matter of the application of

Linda F. M.,

adopted as a minor under the age of 14 years by Dr. Irwin M. and Anne M. for leave to gain access to the sealed adoption records, 6746

Petitioner-Appellant.

An appeal having been taken to this Court by the petitioner-appellant from an order of the Surrogate's Court, Bronx County (Gelfand, S.), entered on March 23, 1979 denying appellant's petition to gain access to her sealed adoption record, and said appeal having been signed by Mr. Martin Guggenheim of counsel for the appellant, and

by Mr. Charles Brody of counsel for the respondent Attorney-General; and due deliberation having been had thereon,

It is unanimously ordered that the order so appealed from be and the same is hereby affirmed for the reasons stated by Gelfand, S., without costs and without disbursements.

ENTER: JOSEPH J. LUCCHI
Clerk

APPENDIX C

In the Matter of LINDA F. M., Petitioner.
Surrogate's Court, Bronx County, January 17, 1978

OPINION OF THE COURT

BERTRAM R. GELFAND, S.

This is a proceeding pursuant to section 114 of the Domestic Relations Law, commenced by an adult adoptee for leave to gain access to the sealed records respecting her adoption on good cause shown. The petitioner's adoptive father is deceased. The adoptive mother joins in this application. The court had directed upon the filing of the petition herein that notice of the application be given to the Attorney-General in view of the issues raised as to the constitutionality of section 114 of the Domestic Relations Law. Notice was also given to the Commissioner of Health who has custody of the original birth record that had been sealed by virtue of the order of adoption dated March 4, 1941.

At the initial hearing on this matter an issue had been raised as to the rights

of the natural parents of the petitioner to participate in this proceeding. The Attorney-General has taken the position that the natural parents are necessary parties in this proceeding; that a guardian ad litem should be appointed to represent them and, if possible, to find them and apprise them of their rights. (See Matter of Anonymous, 89 Misc 2d 132.)

The pertinent portion of section 114 of the Domestic Relations Law states that: "No person shall be allowed access to such sealed records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. No order for disclosure or access and inspection shall be granted except on good cause shown and on such additional persons as the court may direct." (Emphasis added.)

The provisions in the law for sealing adoption records were enacted in 1924 when

the court was given the discretion to seal all of the records except the order. The order was filed and recorded in the county clerk's office (L 1924, ch 323). In 1938 the sealing of all records was made mandatory and the procedure for access to the records was enacted. Initially, the only notice on an application to unseal the file that was required was that to be given to the adoptive parents. By chapter 1038 of the Laws of 1968 the procedures with reference to the processing of applications for agency adoptions (as distinguished from the private placement adoptions) had been drastically changed to provide for the withholding from the adoptive parents of certain personal information respecting the adoptive child, e.g., surname of the child. In this same chapter 1038, section 114 was amended to give the court discretion to serve notice of the application for access to the adoption records "to such additional persons as

the court may direct." From the history of section 114 of the Domestic Relations Law, it is clear that the only mandated necessary parties to an application to open the records are the adoptive parents. The surviving adoptive parent here has joined in this application. The involvement of other persons in the proceeding is within the sound discretion of the court. They may be brought in by notice given to them in such form and such manner as the court may direct (SCPA 313).

It is contended by petitioner that as a matter of law the court lack jurisdiction to direct notice of this proceeding to the natural parents. Petitioner argues that since the statute in existence at the time of the adoption in 1941 contained no provision for notice to "such additional persons as the court may direct" the natural parents had no possible right to notice when they surrendered the child for adoption and

accordingly cannot now have any greater rights than they had at the time of the adoption. The validity of this argument is dependent upon whether the 1968 amendment was procedural or substantive. It is concluded that the 1968 amendment allowed the court to require notice to such additional parties as it may direct as it relates to natural parents is no more than a codification of a procedure for protecting the existing equitable posture of natural parents. Proceedings are governed by the statutes in existence at the time of the proceeding (Matter of Clayton v Clement, 33 NY2d 386, 390; Lazarus v Metropolitan El. Ry. Co., 145 NY 581, 585; Mobil Oil Indonesia v. Asamera Oil [Indonesia], 56 AD2d 339; McKinney's Cons Laws of NY, Book 1, Statutes, §55). It is accordingly concluded that, upon this application, as a matter of law, the court has the discretion to direct notice "to such additional persons" as it may deem advisable.

There is no doubt that a natural parent is a person whose rights can be profoundly affected by the unsealing of a record of a long-completed adoption. The sudden appearance of a long-surrendered child can be an event either joyfully greeted by a natural parent or a shattering trauma totally destructive of the life the parent may have established in the intervening years since giving up the child for adoption. The right to privacy and anonymity of a surrendering parent is an adoption cannot be totally disregarded, if natural parents wishing to surrender their children for adoption are to be encouraged to do so through legitimate sources. Accordingly, it must be recognized that, if possible, upon an application to unseal adoption records, since a natural parent's rights may be affected, ideally the views of such parents should be considered in the proceeding. However, in deciding whether a natural

parent should become a party to the proceedings the bounds of feasibility and practicality cannot be ignored. Where it appears from the record that the natural parents or parent can be readily located, the novel procedure outlined by my respected colleague, Surrogate LAURINO, in Matter of Anonymous (89 Misc 2d 132, supra), presents a practical procedure for considering the rights of the natural parents without disclosing their identity. However, where the information in the file, as in the instant case, reflects that the whereabouts of the natural parent, as well as even her true identity, could not be readily ascertained, if at all, without an extensive search, the requirement of notice ot such person and the appointment of a guardian ad litem in their behalf would serve no purpose. It would burden the proceeding with the additional expense of a guardian ad litem who is not likely to be in a position to significantly contribute to a

determination of the proceeding.

Another pragmatic impact of appointing a guardian ad litem in every case even where it is not likely the natural parent can be located, would be to impose upon the court in every application to unseal an adoption file, the burden of locating a long absent natural parent, even before there has been even a prima facie showing as to the existence of good cause to unseal the adoption file. It is noted that the presence of the Attorney-General in the proceeding provides a litigant who is taking a position opposite to petitioner so that all proof is subject to examination in an adversary atmosphere. Accordingly, on the facts in the instant case, in the exercise of discretion, it is determined that the issues may proceed to trial without notice to the natural parents or the appointment of a guardian ad litem on their behalf.

The matter is set down for a hearing on the issue of good cause to be held on February 15, 1978 at 9:30 A.M. Notice of hearing is to be served on all parties on or before February 3, 1978.

APPENDIX D

In the Matter of LINDA F. M., Petitioner.

Surrogate's Court, Bronx County, October 26, 1978

OPINION OF THE COURT

BERTRAM R. GELFAND, S.

Upon this application petitioner seeks access to both the records of her adoption and to the sealed board of health records relative to her birth. Petitioner pursues a three-pronged attack incorporating a multitude of arguments in support of the relief being sought. Initially she contends that the provisions of section 114 of the Domestic Relations Law pertaining to the sealing, unsealing and confidentiality of adoption records are not applicable to her. As a first alternative she contends that if the statute does apply to her, the proof adduced at the hearing with reference to good cause existing sustains granting the application pursuant to statute. The final

basis presented for relief is a contention that in any event, the statute sealing adoption and original birth records of adoptees is offensive to the provisions of United States and New York State Constitutions and should be declared null and void.

The adoption of petitioner was concluded by the entry of an order on March 14, 1941. Petitioner's adoptive mother joins in the application. Her adoptive father is deceased. Upon the facts then apparent, the request made by petitioner, upon initiation of this proceeding, that her natural parents should not be made parties and that a guardian ad litem should not be appointed for them, was granted (see Matter of Linda F. M., 92 Misc 2d 828).

The constitutionality of the statute is an issue which should be addressed only if the relief sought cannot otherwise be obtained (Broadrick v Oklahoma, 413 US 601; United States v Raines, 362 US 17; People v

Heller, 33 NY2d 314; People v Epton, 19 NY2d 496). Accordingly, the other basis for relief presented by petitioner will be first considered.

It is appropriate to intially address petitioner's contention that the statute governing the sealing of adoption records is inapplicable to her. In support of this position she alleges that this statute applies only to agency adoptions and not to private placement proceedings, such as the one in which she was adopted. The pertinent portion of section 114 of the Domestic Relations Law provides that with reference to sealed adoption records "No order for disclosure or access and inspection shall be granted except on good cause shown." Petitioner's position that this explicit language is not applicable to her case is based upon the fact that the quoted language is in a section of the Domestic Relations Law which is part of title 2 of article 7.

Title 2 is entitled "Adoptions from an Authorized agency."

The pertinent provisions of the title of the Domestic Relations Law governing private placement adoptions indicate in explicit language the total lack of validity of this argument. Title 3 of article 7 of the Domestic Relations Law bears the specific heading "Private-placement adoptions." Subdivision 4 of section 116 of the Domestic Relations Law is part of title 3. That subdivision states that if the court having jurisdiction over the adoption is satisfied that it should be granted, "the provisions of section one hundred fourteen of title two of this article shall apply." Accordingly, the provisions for the sealing of adoption records set forth in section 114 are by reference equally applicable to both private placement and agency adoptions.

It is further argued by petitioner that the statute governing the sealing of adoption

records should be construed as not being applicable to a record where the adoptee has become an adult. The possibility of such a construction rests totally upon the language of the statute.

In addressing this issue, sensitivity must be shown to the well-established principle that separation of powers dictates that courts be limited in construing a statute to determining the intent of the Legislature in those situations where the language of the statute is either subject to more than one interpretation or is otherwise unclear. (Bright Homes v Wright, 8 NY2d 157, 161-162; Sexauer & Lemke v Burke & Sons Co., 228 NY 341; McKinney's Cons Laws of NY, Book 1, Statutes, §76.)

The discharge of this function does not confer upon the judicial branch of government the power, under the guise of construction, to legislate by amending, modifying, extending, or otherwise creating a statutory

provision alien to the clear language of that which has been enacted by the Legislature and signed by the Governor (Matter of Anonymous [St Christopher's Home], 40 NY2d 96, 102; Matter of Malpica-Orsini, 36 NY2d 568, 571, app dsmd 423 US 1042; Bright Homes v Wright, 8 NY2d 157, supra; Allen v Minskoff, 38 NY2d 506; Lawrence Constr. Corp. v State of New York, 293 NY 634, 639; Sexauer & Lemke v Burke & Sons Co., 228 NY 341, supra).

On this subject, Judge CARDOZO, speaking for a unanimous Court of Appeals cautioned that: "Freedom to construe is not freedom to amend." (Sexauer & Lemke v Burke & Sons Co., 228 NY 341, 345, supra.)

Chief Judge LEHMAN writing for a majority of six Judges wrote at page 639 in Lawrence Constr. Corp. v State of New York (supra): "A statute must be read and given effect as it is written by the Legislature, not as the court may think it should or had envisaged all the problems and complica-

tions which might arise in the course of its administration."

More recently Judge FOSTER writing for a unanimous Court of Appeals strongly restated the applicable admonition in the much cited case of Bright Homes v Wright (8 NY2d 157, 162, supra) in the following language: "Courts are not supposed to legislate under the guise of interpretation, and in the long run it is better to adhere closely to this principle and leave it to the Legislature to correct evils if any exist."

Petitioner cites no statutory language limiting the period in which an adoption record remains sealed, nor can the court discern any express or implied intent in the statutes which would support the construction sought by petitioner. A reading of all of the sections of the Domestic Relations Law applicable to both agency and private placement adoptions does not disclose any possible basis for concluding that between the lines

of the explicit language constituting the statute governing the sealing of adoption records, there exists an unexpressed intent on the part of the Legislature that the provisions with reference to such sealing of adoption records are not applicable to adoptees who have reached their majority.

In interpreting adoption legislation, it must be further remembered that adoptions were unknown to the common law. Adoption is a procedure that exists only by dint of statutory enactment (Matter of Malpica-Orsini, 36 NY2d 568, 570, supra; Betz v Horr, 276 NY 83, 86-87; Carpenter v Buffalo Gen. Elec. Co., 213 NY 101, 104; Matter of MacRae, 189 NY 142, 143; Matter of Thorne, 155 NY 140, 143; Caruso v Caruso, 175 Misc 290). Since adoption statutes are in derogation of the common law, they must be strictly construed ("Doe" v "Roe", 37 AD2d 433, 436; Caruso v Caruso, supra; Matter of Santacose, 271 App Div 11, 16; Matter of "Wood" v

"Howe", 15 Misc 2d 1048, 1050).

It is accordingly concluded that the statutes whose construction have been placed in issue by petitioner provide that all records of adoptions are sealed forever unless opened by an order of a court of appropriate jurisdiction upon the establishment by a petitioner of good cause. The applicable statutes make no distinction between a record of a private placement or an agency adoption, nor do they differentiate between a record where the adoptee is now an adult, or one in which the adoptee is still an infant.

It having been concluded that the statute requires a showing of good cause before the records at issue can be unsealed, it is necessary to review the proof offered by petitioner to establish good cause. Petitioner, to succeed on this issue, must show a present need to view the sealed records (Matter of Chattman, 57 AD2d 618; Matter of

Anonymous, 89 Misc 2d 132). This need must rise above mere desire or curiosity. A present need sufficient to sustain good cause has been found when the evidence has shown that access was necessary for a current medical or genetic reason (Matter of Chattman, supra) or for a present psychological problem (Matter of "Anonymous", 92 Misc 2d 224; Matter of Maxtone-Graham, 90 Misc 2d 107). In each of these cases a causal connection was established between the medical support for the application and a present need of the petitioner.

The record indicates that petitioner is now approximately 37 years of age. The order of adoption was entered when she was approximately eight months old. Petitioner first learned of her adoptive status in 1971 when her adoptive father was seriously ill.

Petitioner testified that she was first married in 1960. She presently resides with her 17-year old son who was the sole issue

of that marriage and is petitioner's only child. This marriage was terminated by divorce in December, 1961. Petitioner entered into a second marriage in November, 1971, which was annulled in September, 1974.

It was further testified by petitioner that she graduated from college in 1963. She devoted the period from 1963 to 1970 exclusively to the care of her son. Thereafter she began working in the field of typesetting. She is presently employed by a firm doing related work.

It is argued by petitioner that the knowledge of her adoptive status without the full knowledge of the identity of her natural parents has caused her psychological problems which impaired her artistic skills. In support of this argument, petitioner stated that she had "cut" a musical record in 1964, the success of which was not clarified. She has also indicated that she wrote poetry in college, but was not inspired in this direc-

tion again until 1973.

It is also contended by petitioner that good cause exists because of petitioner's concern that she might enter into a incestuous marriage unless she is able to learn the identity of her natural parents. A further ground for the existence of good cause was that she wished to establish the faith of her natural mother. Petitioner also testified that she had consulted a psychiatrist. However, these consultations were not related to her adoptive status. They consisted of discussions concerning her relationship with the father of her son.

At the hearing testimony was adduced from a psychologist, and from a psychiatrist whose specialty is human genetics. Neither of these witnesses ever treated petitioner. The psychologist was primarily involved with a research project involving adoptees as one phase of an inquiry called "People at Risk." The other groups involved in addition to

adoptees were prisoners and diabetics. This witness had interviewed petitioner during three one-hour sessions over a one-year period and had administered tests in connection with a control group of 300 adoptees he had under study. Petitioner's test results placed her in the middle of the test scale. These results indicated nothing unusual about petitioner as an adoptee as against a nonadoptee.

The expert testimony of the psychiatrist was limited to indicating that genetic history is useful in the diagnosis of certain ailments. However, neither petitioner nor her son is undergoing, or has in the past undergone, any medical treatment or examination for which genetic data was needed. The testimony on genetics was in no way related to petitioner or her son, nor was it causally connected to the issue on trial.

The evidence as to petitioner's marital history and lack of artistic achievement for

a period of years was not even remotely connected to any need to view the records that are presently sealed. The attempt to relate the lack of success of her second marriage to a younger man of a different faith to her 1971 discovery of her adoptive status is not supported by the credible proof. The hiatus in petitioner's artistic efforts began long before petitioner knew she was adopted and her present renewed interest began long after she learned she was an adoptee. The proof on this subject did not in any way relate her nonproductivity in artistic areas to her adoptive status or to her learning of this status. The record is also devoid of any evidence which would support a conclusion that petitioner, or her son, harbored any religious belief which would sustain a need to unseal the records at issue.

The evidence adduced fails to even suggest, let alone sustain, any conclusion other than that the motivating cause for the

application is petitioner's curiosity. To conclude that mere curiosity as to one's natural forebears constitutes good cause within the framework of section 114 of the Domestic Relations Law would render the clear import of the statute meaningless. Every application to unseal adoption records would have to be perfunctorily granted. This would be a result whereby judicial fiat the clear provisions of the statute would be routinely ignored. Such a course would be no less than blatant judicial intrusion into the legislative process. It is accordingly concluded that petitioner has failed to establish a statutory right to relief.

There remains petitioner's challenge to the constitutionality of the statute that bars her access to the records she seeks to examine. Petitioner argues that section 114 of the Domestic Relations Law unconstitutionally deprives her of a fundamental right to her "personality", "privacy", and "to

receive information about her origin", all of which rights are allegelly "protected by the due process and equal protection clauses, as well as by the Thirteenth Amendment." It appears that intrinsically this argument rests upon the statute precluding her from access to information as to her birth which a nonadoptee could obtain, and a conclusion that this legislatively created limitation has no legitimate basis.

A court in assessing a constitutional attack upon a statute must be sensitive to certain basic principles. It must be remembered that a strong presumption of constitutionality attaches to all legislation (Wasmuth v Allen, 14 NY2d 391, 397; Defiance Milk Prods. Co. v Du Mond, 309 NY 537; Matter of Cullum v O'Mara, 43 AD2d 140, 145). From this presumption flows a further presumption that the Legislature, in enacting a statute, has investigated and found the facts necessary to support a need for the legislation

(I.L.F.Y. Co. v Temporary State Housing Rent Comm., 10 NY2d 263, 269; Lincoln Bldg. Assoc. v Barr, 1 NY2d 413; Matter of Cullum v O'Mara, supra; East N.Y. Sav. Bank v Hahn, 293 NY 622, affd 326 US 230). Relatively recent holdings of our highest court have indicated that a party seeking to declare a statute unconstitutional must demonstrate its invalidity beyond a reasonable doubt (People v Pagnotta, 25 NY2d 333, 337; Matter of Van Berkel v Power, 16 NY2d 37, 40).

It is not disputed that the development of a procedure which will promote, encourage and facilitate the adoption of children is a legitimate area of State concern. As in other areas of responsibility exercised by a sovereign State, it is recognized that the proper discharge of these responsibilities involves, of necessity, the enactment of statutes which submerge individual rights to the common good resulting in some restriction on the unfettered liberty of indivi-

duals or institutions to proceed as they may wish in every situation. The State is given this authority under the police powers so that it may discharge its responsibilities as sovereign. These powers give broad discretion to the Legislature in selecting the most appropriate course for promotion and protecting the health, welfare and safety of the people of the State. The extensive nature of the State's police power was described by the United States Supreme Court as follows in Atlantic Coast Line v. Goldsboro (232 US 548, 558): "For it is settled that neither the 'contract' clause nor the 'due process' clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and

property rights are held subject to its fair exercise." Its scope was more recently summarized by the Court of Appeals as follows: "At the outset it must be emphasized that '(t)he police power of the State is the least limitable of all the powers of government' (Matter of Engelsher v Jacobs, 5 N Y 2d 370, 373, cert. den. 360 U.S. 902) and we have sustained its application to the conversation of fish and wildlife (Barrett v State of New York, 220 N.Y. 423, supra) and other areas of beauty and esthetics (New York State Thruway Auth. v Ashley Motor Ct., 10 N Y 2d 151; People v Stover, 12 N Y 2d 462, app. dsmd. 375 U.S. 42 [for want of substantial Federal question]). In Barrett (supra, at p. 428) we said: "The police power is not to be limited to guarding merely the physical or material interests of the citizen. His moral, intellectual and spiritual needs may also be considered.'" (Nettleton Co. v Diamond, 27 NY2d 182, 192-193.)

The holding of the Court of Appeals in Nettleton Co. v Diamond (supra) specifically states that the police power extends to promoting the moral, intellectual, and spiritual needs of its people. It must be concluded that a statutory scheme to encourage and facilitate the adoption of children certainly involves the moral needs and welfare of the State's citizens, as well as the physical welfare of the children involved. Accordingly, it is concluded that adoption is an area subject to the State's exercise of its police power.

It cannot be concluded that the Constitution envisaged rights such a "personality" or an unfettered right to receive any information one might desire. Petitioner has neither shown a valid basis for concluding from either the United States or New York Constitutions that such rights exist or if they do exist how they are violated by the statute at issue exceeding the

legitimate exercise by the State of its police powers. No right to privacy of this petitioner is conceivably at issue. If any person's privacy is involved, it is the possible right to privacy of the natural parents.

The statute does create a differential between the ability of an adoptee to obtain original birth records as against a non-adoptee. Implicit in this distinction is the creation of two classifications of citizens. Careful consideration has been given as to whether this is offensive to the constitutional guarantee to all our citizens of equal protection under the law.

Petitioner asks that in determining constitutionality that the more exacting "strict scrutiny" test be applied to the statute rather than the less demanding criteria of ascertaining if a rational basis exists for its provisions. Under the criteria petitioner wishes applied, it would be

the duty of the court to determine if, to the extent adoption records and adoptees birth records are sealed, the Legislature has enacted limitations which have been drawn with sufficient narrowness so as to limit individuals to the minimum extent that is required to effectuate a legitimate State interest (Roe v Wade, 410 US 113, 155; Kramer v Union School Dist., 395 US 621, 627; Shapiro v Thompson, 394 US 618; Griswold v Connecticut, 381 US 479, 485; Aptheker v Secretary of State, 378 US 500, 508).

The "strict scrutiny" test is applicable only in limited circumstances. It is to be applied "only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage to s suspect class." (Massachusetts Bd. of Retirement v Murgia, 427 US 307, 312, emphasis added; see, also, San Antonio School Dist. v Rodriquez, 411 US 1, 16.)

The characteristics of a suspect class are set forth by the United States Supreme Court in Massachusetts Bd. of Retirement v Murgia (427 US 307, 313, supra): "Rodriquez, supra, [411 US] at 28, observed that a suspect class is one 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.'" It cannot conceivably be concluded that in the enactment of section 114 of the Domestic Relations Law, the Legislature sought to place adoptees in a suspect class to their peculiar disadvantage (Mathews v Lucas, 427 US 495). It is noted that in Mathews v Lucas (supra) the United States Supreme Court held illegitimates not to constitute a suspect class. It is impossible to conceive that adoptees constitute a suspect class.

There remains the question as to whether a "fundamental right" of petitioner is here involved. Every restriction on individual desires or actions does not involve what the law has delineated as a "fundamental right." The boundaries of such rights are relatively clear. For the petitioner to be deemed to have a "fundamental right" to learn the names of her natural parents without meeting the statutory requirement to show good cause, the right to such relief must be either implicit in the concept of ordered liberty or explicitly or implicitly granted by the Constitution (San Antonio School Dist. v Rodriquez, 411 US 1, 33-34, supra; Roe v Wade, 410 US 113, 152, supra; Palko v Connecticut, 302 US 319, 325). Certain matters relating to the "family" have been determined to be fundamental rights. These include, inter alia, procreation, marriage and divorce (Roe v Wade, supra; Eisenstadt v Baird, 405 US 438; Griswold v Connecticut,

381 US 371). On the other hand, other cases have held that classifications affecting the "family" or based upon legitimacy are not subject to the "strict scrutiny" test based upon the abridgment of a fundamental right (Mathews v Lucas, 427 US 495, supra; Labine v Vincent, 401 US 532; Dandridge v Williams, 397 US 471).

Neither within the Constitution of the United States and the State of New York, nor in the multitude of cases concerned with their provisions, can any explicit or implicit constitutional guarantee be discerned which would guarantee to petitioner the right to view the records at issue. The court is both understanding and sympathetic to petitioner's curiosity about her forebears. It is an interest shared with legions of her fellow citizens who, to widely differing degrees, dependent on a multitude of varying circumstances, are capable or incapable of satisfying their interest in their

genealogy. However, it cannot be concluded that obtaining the information at issue goes to the ability of petitioner to enjoy the fundamental liberties required to freely pursue any activity basic to a full life. Countless citizens drink of the cup of liberty to the fullest extent without any information as to their forebears. It is noted that to the extent one has a peculiar need for genealogical information, the New York statute has made provisions. The request of petitioner for application of the "strict scrutiny" test must be denied as inapplicable and the issues determined by the "rational basis" test. This finding as to the appropriate standard applicable to the issues is not intended to imply that if it were necessary to use any other standard, a conclusion has been reached that a different result would be required on the issue of constitutionality.

The United States Supreme Court in Lindsley v Natural Carbonic Gas Co. (220 US 61, 78-79) used the following language to explicitly set forth the appropriate tests to be here applied in determining if a statute which creates classifications is offensive to the constitutionally guaranteed right to equal protection: "The rules by which this contention must be tested, as is shown by repeated decisions of this court, are these: 1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some

inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. Bachtel v Wilson, 204 U.S. 36, 41; Louisville & Nashville R.R. Co. v. Melton, 218 U.S. 36; Ozan Lumber Co. v. Union County Bank, 207 U.S. 251, 256; Munn v. Illinois, 94 U.S. 113, 132; Henderson Bridge Co. v. Henderson City, 173 U.S. 592, 615." (See, also, Massachusetts Bd. of Retirement v. Murgia, 427 US 307, 313, supra; Usery v Turner Elkhorn Mining Co., 428 US 1; Eisenstadt v Baird, 405 US 438, supra; MacDonald v Board of Election, 394 US 802, 809; Barrett v Indiana, 229 US 26.)

The Court of Appeals in Matter of Dorn "HH" v Lawrence "II" (31 NY2d 154, 158) stated the governing principle as follows: "It is fundamental, of course, that the Legislature may classify persons for purposes of legislation without infringement of the equal protection guarantee and that its discretion in this regard is broad and will not be disturbed if any state of facts can reasonably be conceived to sustain its classification (Matter of 436 W. 34th St. Corp. v McGoldrick, 288 N.Y. 346, 350, mot. for rearg. den. 289 N.Y. 673; Shielcrawt v. Moffett, 49 N.Y.S.2d 64, 76, affd. 268 App. Div. 352, revd. on other grounds 294 N.Y. 180, mot. for rearg. den. 294 N.Y. 840; New York R.T. Corp. v. City of New York, 303 U.S. 573) or even if the classification be fairly debatable (Matter of Presnell v. Leslie, 3 N Y 2d 384, 390, mot. for rearg. den. 4 N Y 2d 1046), provided only it shall not be palpably arbitrary (New York ex rel.

Bryant v. Zimmerman, 278 U.S. 63)."

The enactment of article 7 of the Domestic Relations Law reflects a clear legislative recognition of the necessity for a statutory procedure which would promote the welfare of infants by the establishment of a legal parent-child relationship where one does not naturally exist. The encouragement of the adoption of children is indisputably a legitimate legislative goal. Petitioner has not sustained her burden to show that a state of facts cannot reasonably justify the need for confidentiality of adoption records, except where good cause is shown. In the absence of such showing it cannot be concluded that the statutory provisions are arbitrary. Pertinent to this conclusion is the fact that the sealing of these records does not involve information relative to the petitioner alone, but also involves the right of privacy of the natural parents, wherever they may now be. It is

noted in this case that the age information on the birth certificate supports a conclusion that both the natural mother and father could presently be alive. Although the information suggests that locating them would be a far from simple task, it is within the realm of possibility, given a sufficient effort. Accordingly, it is determined that petitioner has not sustained her burden to establish that the view of the Legislature on the subject of confidentiality, as is reflected in the statute, has no rational basis.

Counsel for petitioner notes that some States other than New York do allow adult adoptees open access to their adoption records. This circumstance cannot affect the legal questions before this court. That some States do allow adult adoptees access to adoption records is no more relevant to the issues before the court than the fact that most States have statutes closer to the

present New York law. Each State is sovereign. It is neither appropriate nor proper for the court to determine which legislative view is wiser.

On the constitutional questions before this court, it is concluded that petitioner has not established the constitutional invalidity of the statutory provisions she placed at issue. The question of whether New York should adopt the position of some of her sister States in unsealing by statute the records of adult adoptees is a subject for legislative, not judicial determination. It is a change that cannot be successfully accomplished by constitutional attacks on the present statute, or a search for strained and impossible constructions of existing law.

The application is in all respects denied and the petition dismissed.

At a term of the Surrogate's Court, Bronx County, 850 Grand Concourse, Bronx, New York, on the 23rd day of March, 1979.

P R E S E N T:

HON. BERTRAM R. GELFAND,

Surrogate.

In the Matter of the Application of

LINDA FREYA MASON

adopted as a minor under the age of 14 years by Dr. Irwin Mason and Anne Mason for leave to gain access to the sealed adoption records.

DECREE

An application having been made for access to and inspection of the adoption records of the Surrogate's Court, and the Department of Health, with reference to LINDA FREYA MASON, who was adopted pursuant to an order of this Court entered March 4, 1941 by Dr. IRWIN MASON and ANNE MASON;

AND upon the petition of LINDA FREYA MASON duly verified on May 24, 1977, requesting access to an inspection of all the above mentioned records pertaining to petitioner's adoption, to which she alleged she was entitled as an adult as well as under Domestic Relations Law, Section 114, for good cause shown or in the alternative as a matter of constitutional right; and upon submitting exhibits supporting said petition, and petitioner's knowledge of information identifying her natural mother by name and address;

AND an Order to Show Cause having been granted by this Court on June 3, 1977, returnable on September 21, 1977 directing the Department of Health of the City of New York, the custodian of petitioner's birth records and the Attorney General of the State of New York in view of the issues raised as to the constitutionality of DRL §114 to show cause why the records relative

to the adoption of LINDA FREYA MASON should not be opened for access and inspection by the petitioner; why the records of birth of the New York City Department of Health relative to petitioner should not be opened for disclosure and inspection by petitioner and, should the relief not be granted on other grounds, why Section 114 of the Domestic Relations Law should not be declared unconstitutional; and an answer having been filed by the respondents, Department of Health of the City of New York, by the Corporation Counsel together with an affirmation by Beryl Kuder, of counsel, dated August 19, 1977, and by the Attorney General of the State of New York by Charles Brody, of counsel, dated July 6, 1977, both requesting a hearing on the issue of whether petitioner had good cause to obtain access to her records pursuant to DRL §114, denying petitioner's standing to raise the issue of the constitutionality of the statute chal-

lenged unless her application for lack of good cause has been denied and requesting dismissal of the petition concerning the challenge to the constitutionality of the statute;

AND thereafter the application having come on to be heard on September 28, 1977 and petitioner having appeared in person and by Herzfeld & Rubin, P.C. by Gertrud Mainzer, of counsel, in support of said application and this Court having confirmed that petitioner had knowledge of the identifying information contained in the Court's record but petitioner's original birth certificate not being contained in the court's file, directed petitioner to prepare an order to the Board of Health to break the seal on petitioner's original birth record and forward certified copies thereof to the Court for its examination;

AND an order to the Board of Health having been signed by this Court on September

30, 1977 directing the Board of Health to break the seal of the original birth record and produce such record to this Court by forwarding for its examination two certified copies of the original complete birth record of LINDA FREYA MASON;

AND a hearing having been held on October 24, 1977 at which LINDA FREYA MASON appeared in person and by Herzfeld & Rubin, P.C., Gertrude Mainzer, of counsel, and the Attorney General by Charles Brody, of counsel, and this Court having informed petitioner that the original birth record received from the Board of Health contained additional identifying information not previously contained in the Court record, unknown to petitioner and therefore requiring a good cause hearing;

AND the Attorney General having taken the position that parents are necessary parties to this proceeding and suggesting appointment of a guardian ad litem for

petitioner's natural parents;

AND after receiving memoranda of law and after hearing arguments on December 5, 1977 by petitioner opposing the appointment of a guardian ad litem and by the Attorney General by Charles Brody, of counsel, in support of said appointment, this Court rendered its decision dated January 17, 1978 [92 Misc. 2d 828 (Surr. Ct. Bronx Co.]), directing a good cause hearing without appointment of a guardian ad litem for petitioner's natural parents;

AND a hearing on the issue of good cause having been held before the Hon. Bertram R. Gelfand, Surrogate, Bronx County on March 16, 1978, at which petitioner appeared in person and with Herzfeld & Rubin, P.C., by Gertrud Mainzer, of counsel, and the Attorney General by Charles Brody, of counsel, appeared in opposition and participated as adversary party on the issue of whether petitioner had shown good cause for access

and inspection of her adoption and birth records and witnesses for petitioner having been heard and cross-examined by the Attorney General;

AND this Court having heard arguments and receiving memoranda of law by petitioner in support of her application as entitled to the relief requested for good cause shown as required under DRL §114 and in the alternative because denial of the request would violate the New York and United States Constitution; and by the Attorney General opposing petitioner's request because not entitled thereto because good cause had not been shown by petitioner under DRL §114 and because denial of petitioner's request was not violative of the Constitution of the State of New York or the Constitution of the United States;

AND a decision having duly been rendered by the Court in writing, dated October 26, 1978 holding that DRL §114 did apply to

petitioner, that she had not established good cause to obtain access to her sealed adoption and birth records under DRL §114 and that DRL §114 was constitutional;

NOW, on motion of Herzfeld & Rubin, P.C., attorneys for petitioner, and the Attorney General of the State of New York as respondent, it is

ORDERED, ADJUDGED AND DECREED that DRL §114 applies to petitioner, that she has not established good cause to obtain access to her sealed adoption records and to the sealed records of the Department of Health as required by DRL §114, and that DRL §114 does not violate the Constitution of the State of New York or the Constitution of the United States; and it is further

ORDERED, ADJUDGED AND DECREED that the petition of LINDA FREYA MASON for access to her sealed adoption records and to the sealed

records of the Department of Health relative to her birth is denied.

E N T E R

_____

Surrogate

APPENDIX E

Remittitur

COURT OF APPEALS

STATE OF NEW YORK

1 No. 45
In the Matter of Linda F. M.,
Adopted as a Minor Under the Age
of 14 Years by Dr. Irwin M. and
Anne M. for Leave to Gain Access
to the Sealed Adoption Records,
Appellant.

The appellant in the above entitled appeal appeared by Martin Guggenheim; the respondent appeared by Robert Abrams, Attorney General.

The Court, after due deliberation, orders and adjudges that the order is affirmed, with costs. Opinion by Cooke, Ch. J. All concur.

The Court further orders that the papers required to be filed and this record of the proceedings in this Court be remitted to the Surrogate's Court, Bronx County, there to be proceeded upon according to law.

I certify that the preceding contains a correct record of the proceedings in this

appeal in the Court of Appeals and that the papers required to be filed are attached.

Joseph W. Bellacosa, Clerk
of the Court

Court of Appeals, Clerk's Office, Albany, New York

February 24, 1981

APPENDIX F

STATE OF NEW YORK
COURT OF APPEALS

In the Matter of the
Application of

LINDA F. M.,

Adopted As a Minor Under
the Age of 14 Years by Dr.
Irwin M. and Anne M. for
Leave to Gain Access to
the Sealed Adoption Records,

Petitioner-Appellant.

Calendar No.
45

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that Linda F. Mason, the petitioner-appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the New York Court of Appeals entered in this action on February 24, 1981.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

MARTIN GUGGENHEIM
Counsel for Petitioner-
Appellant

Dated: New York, New York
May 4, 1981

CERTIFICATE OF SERVICE

I, MARTIN GUGGENHEIM, a member of the Bar of the Supreme Court, hereby certify that I have served the within Notice of Appeal upon all parties required to be served by mailing same in a sealed envelope, with postage prepaid therein, in a post-office or official depository to Honorable Robert Abrams, Attorney General of the State of New York, Two World Trade Center, New York, New York 10047

Dated: May 4, 1981

MARTIN GUGGENHEIM